February 16, 2005

MLPA Public Comments
c/o The California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Attn: Melissa Miller-Henson

Via U.S. Mail and Electronic Mail: MLPAComments@resources.ca.gov

Re: February 22-23, 2005 Blue Ribbon Task Force Meeting, Agenda Item #3

Dear Ms. Miller-Henson:

The member organizations of the California Coastkeeper Alliance (CCKA) work daily to achieve a vision of clean water and ready access to an ecologically healthy coast and ocean for all Californians. On behalf of the Alliance, I appreciate the opportunity to provide comments on the Draft Master Plan Framework section "Design of MPAs and the MPA Network." The draft prepared for Agenda Item #3 of the February Task Force meeting is well-written and generally comprehensive. It would be even more complete with expanded discussions of the importance of clean water to healthy marine ecosystems, the requirements of existing state and federal law in this regard, and the availability of bond funding to enhance the Marine Life Protection Act (MLPA) efforts as they pertain to clean water. These are points that I touched on in my oral comments at the January Task Force meeting, and that are explored more fully here.

The draft text of the "Design of MPAs" section briefly touches on water quality issues in the context of identifying human activities that may affect representative habitats (page 5), but does not expand upon that initial reference. Further examination of the role that water quality plays in ecosystem integrity is important to the full implementation of the goals of the MLPA, including the goals of: "protect[ing] the natural diversity and abundance of marine life, and the structure, function and integrity of marine ecosystems"; helping to "sustain, conserve, and protect marine life populations"; and "ensur[ing] that California's MPAs have clearly defined objectives, effective management measures, and adequate enforcement." (Fish and Game Code § 2853(b).)

More broadly, both the U.S. Commission on Ocean Policy and the Pew Oceans Commission recommended managing our oceans on an ecosystem basis. This recommendation

for coordinated ocean governance and management was echoed in Governor Schwarzenegger's recently-released Ocean Action Strategy and is being implemented through the development of the Governor's Ocean Council pursuant to SB 1319 (2004). A more complete, ecosystem-based MLPA process would accordingly include an increased consideration of water pollution issues and opportunities.

By way of background, coastal pollution can come from both direct discharges ("point sources") and runoff from land-based activities ("nonpoint source pollution"). Plumes of contaminated runoff can float on top of the heavier seawater and have been shown to extend 25 or more miles offshore. Nutrient pollution, such as from farms, can create toxic algal blooms in marine waters. Numerous toxic algal blooms off California's shores in recent years have produced domoic acid, a harmful biotoxin that affects the nervous system in animals and humans and that has caused the death of many marine mammals along California's coast. Inland, nonpoint source pollution from logging and other activities impair habitats critical for marine life, including North Coast streams essential to threatened and endangered species such as Pacific Coast coho salmon. The health, safety and welfare of California residents who use marine resources similarly depends upon clean coastal and ocean waters. For example, the Monterey County Convention and Visitor's Bureau states that "[t]ourism in Monterey County is a $1.8 billion industry, with many people coming to admire and observe the magnificent marine environment."

Point and nonpoint source discharges lead to beach closures, degraded bay and estuarine habitats, increased levels of contaminants in marine sediments, bioaccumulation of pollutants in the tissues of marine organisms, degraded benthic communities, loss of kelp beds, and sediment toxicity. Oil spills and other spills can also cause problems; sewage spills have killed or impaired thousands of fish and other marine animals. A sewage spill into the Salinas River resulted in a portion of the river becoming completely depleted of oxygen and in the loss of hundreds of fishes, including steelhead trout (a federally listed species). Even some chemical compounds commonly thought to be non-toxic can have an adverse effect on wildlife; for example, the release of 2,300 gallons of vegetable oil into Monterey Bay in 1997 impacted a variety of bird species and killed several hundred birds. Dredging and disposal of dredged sediments, invasive species releases, hydromodification, coastal shoreline erosion and armoring, habitat modification, and other activities also can all impact coastal and marine ecosystems. (*See, e.g.*, Department of Fish and Game, *California's Living Marine Resources: A Status Report* (Dec. 2001).)

Though water quality is clearly an important consideration in the MPA Designation process, the designation of MPAs, including marine reserves, should not be limited to "clean" areas. This is in part because there are very few areas that are completely unimpacted, and also because impacted areas that are designated as MPAs may be excellent candidates for bond funding or other attention that would improve the water quality of that area. As noted in CCKA's oral testimony on January 10th, there are a number of water quality programs that should be reflected in the Designation section of the Framework document in order to have a broader picture of the laws and opportunities that are implicated in the designation process. These include, but are not limited to, the following:

- Areas of Special Biological Significance Program
- Critical Coastal Areas Program
- Impaired Waters Cleanup Program ("Section 303(d)" or "TMDL Program")
- Opportunities provided by state bond and federal grant monies

First, **Areas of Special Biological Significance** (ASBSs) are marine areas designated by the State Water Resources Control Board (SWRCB) as having particularly unique and/or sensitive biological communities. There are currently 34 ASBSs along the California coast. To protect these communities, the SWRCB established a number of years ago a regulatory prohibition on all discharges into ASBSs; this prohibition cannot be avoided other than through a rigorous exception process. Despite the prohibition, numerous discharges remain, and the Legislature passed laws in 2003 (AB 1747) and 2004 (AB 2529) to prioritize funding toward cleanup of these areas. Since ASBSs were designated due to the value of their biological communities, it is possible that they may be included as part of a larger network of MPAs. If so, opportunities for state funding to treat and/or divert discharges into these areas should be sought.

Second, in response to the federal Coastal Zone Act Reauthorization Amendments of 1990, the State Water Board and California Coastal Commission established a program to identify "**Critical Coastal Areas**" (CCAs) in need of protection and restoration as a result of nonpoint source pollution (*see* http://www.coastal.ca.gov/nps/cca-nps.html). The dual goals of this program are to improve degraded water quality and provide extra protection from polluted runoff to "marine areas of high resource value." The agencies are currently drafting a "State of the CCAs" Report on the 101 identified CCAs, which should be instructive to the MLPA designation process. The agencies have announced workshops in early 2005 to present their priority list of CCAs and obtain public input on the selection of pilot CCAs. Integration with this effort could help better identify potential MPAs and enhance the measures put in place to protect designated MPAs.

Third, **Section 303(d) of the Clean Water Act** requires states to identify specific water bodies where water quality standards are not being met, or are not expected to be met within the next two years. States must then establish a priority ranking of these "**impaired waters**" and, in accordance with those rankings, establish limits on all pollution discharges, both point and nonpoint, into these waters in order to ensure attainment of water quality standards within a "margin of safety." These limits are referred to as the "total maximum daily loads" (TMDLs) for the identified pollutants and waters. Because many of these impaired waters are coastal, it is possible that MPAs may be designated in or adjacent to them. The Designation process should consider the status of the waters at issue under Section 303(d); if an area that includes an identified "impaired" water body is designated pursuant to the MLPA, then a higher cleanup priority (with associated government cleanup funding) should be sought for that area.

Finally, there are numerous **state bond funds** (Proposition 40 and 50 in particular) and **federal grant funds** (such as the Section 319 fund under the Clean Water Act, which supports projects to clean up and prevent polluted runoff discharges) available for clean water projects associated with MPAs. For example, the "Prop 50 Integrated Regional Water Management [IRWM] Grant Program" is a joint program between the Department of Water Resources and the

State Water Resources Control Board that provides funding for projects to protect and improve water quality. Funding is available for IRWM Planning and Implementation Grants of up to $500,000 per planning grant and up to $50 million per implementation grant (*see* http://www.grantsloans.water.ca.gov/grants/integregio.cfm and http://www.waterboards.ca.gov/funding/irwmgp/index.html for more information). Coordination of MLPA efforts with coastal IRWM grantee programs could have significant ecosystem benefits.

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In summary, the Designation process should consider, though not be driven by, water quality issues, in order to ensure that the MLPA's marine ecosystem restoration and preservation goals are fully realized. If a marine area being considered for designation is relatively clean, its good water quality can enhance other measures taken to protect that area. If an area under consideration is impacted in some way, the designation may be helpful in obtaining available funds and enhanced priority for cleanup. Increased coordination with State and Regional Water Boards, particularly in light of the upcoming first meeting of California's new inter-agency Ocean Council, will be important in this regard.

Thank you for your consideration of these comments, and for your work to implement this important marine initiative, which will be a model for the country.

Sincerely,

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Executive Director

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